

BOHN & BOHN LLP
ROBERT H. BOHN, ESQ. - State Bar #36283
152 N. Third Street, Suite 200
San Jose, California 95112
Telephone: (408) 279-4222
Fax No.: (408) 295-2222



Attorneys for Plaintiff CYNTHIA MENDEZ

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CYNTHIA MENDEZ,

No. C04 01312 HRL

Plaintiff,

v.

**STIPULATION AND ORDER TO
FILE SECOND AMENDED
COMPLAINT**

UNUM PROVIDENT
CORPORATION; PROVIDENT LIFE
& ACCIDENT INSURANCE
COMPANY,

Defendants.

Plaintiff CYNTHIA MENDEZ and Defendants UNUM PROVIDENT CORPORATION and PROVIDENT LIFE & ACCIDENT INSURANCE COMPANY hereby stipulate and agree that Plaintiff MENDEZ be permitted to file a Second Amended Complaint, a copy of which is attached as Exhibit "A", in the above-entitled action. It is further stipulated between these parties that such Second Amended Complaint be deemed properly served on Defendants herein on service of the Order pursuant thereto on counsel for such defendants

DATED: June 10, 2005

BOHN & BOHN LLP

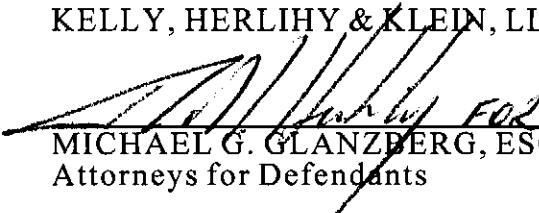
ROBERT H. BOHN, ESQ.
Attorneys for Plaintiff

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1 It is so stipulated:

2 DATED: June 10, 2005

KELLY, HERLIHY & KLEIN, LLP

3
4  FOR
5 MICHAEL G. GLANZBERG, ESQ.
6 Attorneys for Defendants

7 **ORDER**

8 It is hereby ordered that Plaintiff, CYNTHIA MENDEZ, be permitted to file a
9 Second Amended Complaint, a copy of which is attached hereto as Exhibit "A." It is
10 further ordered that service of such Second Amended Complaint on Defendants UNUM
11 PROVIDENT CORPORATION and PROVIDENT LIFE & ACCIDENT INSURANCE
12 COMPANY, be deemed effective on service of this Order on counsel for such defendant.

13
14 Dated: 6/15/05

/s/ James Ware
15 UNITED STATES DISTRICT COURT
16 HONORABLE ~~HOWARD R. LLOYD~~

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EXHIBIT "A"

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Attorneys for Plaintiff CYNTHIA MENDEZ

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CYNTHIA MENDEZ,

No. C04 01312 HRL

Plaintiff,

v.

UNUM PROVIDENT
CORPORATION; PROVIDENT LIFE
& ACCIDENT INSURANCE
COMPANY,

**SECOND AMENDED COMPLAINT
FOR BREACH OF INSURANCE
CONTRACT; INSURANCE BAD
FAITH; AND DEMAND FOR
TRIAL BY JURY**

Defendants.

Plaintiff CYNTHIA MENDEZ complains of Defendants UNUM PROVIDENT CORPORATION and PROVIDENT LIFE & ACCIDENT INSURANCE COMPANY and alleges:

FACTS COMMON TO ALL COUNTS

1. Plaintiff CYNTHIA MENDEZ at all relevant times has been and is a resident of the County of San Benito, State of California. Defendant UNUM PROVIDENT CORPORATION is a corporation incorporated in the State of Delaware and PROVIDENT LIFE & ACCIDENT INSURANCE COMPANY is a CORPORATION doing business in the State of Tennessee. Both Defendants were doing business in the State of California.

2. Plaintiff CYNTHIA MENDEZ at all relevant times was an employee of the

1 Housing Authority of the County of Santa Clara and insured in their group disability
2 insurance policy issued by Defendants UNUM PROVIDENT CORPORATION and
3 PROVIDENT LIFE & ACCIDENT INSURANCE COMPANY.

4 3. Plaintiff was employed as a Housing Programs Specialist/Social Worker.

5 4. Plaintiff became disabled from fibromyalgia and carpal tunnel syndrome in
6 or around April 2000 and from two subsequent strokes and has continued to be totally
7 disabled from performing her job or any other job for which she has the education and
8 experience and has been under medical care to this date. This matter in controversy
9 exceeds, exclusive of interest and cost, the sum specified by 28 USC § 1332.

10 **FIRST COUNT: BREACH OF INSURANCE CONTRACT**

11 Plaintiff complains of Defendants UNUM PROVIDENT CORPORATION and
12 PROVIDENT LIFE & ACCIDENT INSURANCE COMPANY, and for her First Count
13 alleges:

14 5. Plaintiff hereby incorporates by reference Paragraphs 1 through 4 and
15 realleges the same as though fully set forth herein.

16 6. In or around 1983, Plaintiff entered into employment with the Housing
17 Authority of the County of Santa Clara. Through her employment, Plaintiff entered into
18 a contract with Defendants for long term disability coverage, a copy of which is attached
19 hereto and incorporated by reference as Exhibit "A." Pursuant to the terms of the
20 insurance contract, Defendants agreed to provide Plaintiff with long term disability
21 insurance. Plaintiff has fully complied with all terms and conditions imposed upon her
22 by the policy of insurance identified herein.

23 7. Throughout the period of said policy, Plaintiff performed each act required
24 on her part to keep the policy in full force and effect and has fully complied with all
25 terms and conditions imposed upon her by the policy of insurance identified herein.
26 Plaintiff intended and expected thereby to be assured of peace of mind and financial
27 security in the event of any medical ailment or physical trauma to Plaintiff.

28 8. On or about April 21, 2000, Plaintiff became disabled with a diagnosis of

1 carpal tunnel syndrome, resulting in surgeries on December 4, 2000 and January 15,
2 2001. She continued to suffer shaking, tingling and swelling of both hands. Defendants'
3 agents interviewed Plaintiff on or about November 28, 2001 and documented an
4 additional diagnosis of fibromyalgia. Plaintiff had limitations of exhaustion after thirty
5 minutes of activity, inability to do shopping or household duties and difficulty climbing
6 stairs. She continues to be disabled to the present time. In addition, Plaintiff suffered
7 disabling strokes in March and October 2003, together with other complications.
8 Pursuant to Plaintiff's disability insurance contract with Defendants, she was entitled
9 to monthly disability benefits of \$2,289.00. Defendants paid insurance benefits to July
10 2002. Plaintiff appealed the discontinuance of disability benefits and received her final
11 notice of denial by Defendants on or about April 9, 2003.

12 9. Defendants failed to properly investigate Plaintiff's claims in that
13 Defendants' decision to terminate Plaintiff's disability benefits was based on an
14 improper review of her file.

15 10. Defendants had a covenant implied by law to deal in good faith and fairly
16 with Plaintiff under the contract of disability insurance. Defendants breached the
17 contract by violating the covenant of good faith and fair dealing with Plaintiff.

18 11. As a direct and proximate result of Defendants' breach of insurance contract
19 with Plaintiff, Plaintiff has been specially damaged by being deprived of long term
20 disability benefits and by incurring attorney's fees in order to assert her rights under
21 such contract in amounts not yet fully ascertained but in excess of the jurisdictional
22 limits of this Court. Plaintiff hereby reserves the right to amend to submit such special
23 damages as incurred or ascertained.

24 **SECOND COUNT: INSURANCE BAD FAITH**

25 Plaintiff complains of Defendants UNUM PROVIDENT CORPORATION and
26 PROVIDENT LIFE & ACCIDENT INSURANCE COMPANY and for her Second Count
27 alleges:

28 12. Plaintiff hereby incorporates by reference Paragraphs 1 through 4 and 6

1 through 10 and realleges the same as though fully set forth herein.

2 13. By entering into said insurance contract with Plaintiff, Defendants agreed
3 to deal in good faith and fairly with Plaintiff in all matters concerning such contract.
4 Defendants have breached, and continues to breach, its covenant of good faith and fair
5 dealing with Plaintiff by unreasonably denying Plaintiff's disability insurance benefits.

6 14. Defendants' extreme and outrageous conduct was done with the intention
7 of causing, or with a reckless disregard of the probability of causing, both physical and
8 emotional distress to Plaintiff.

9 15. As a direct and proximate result of Defendants' bad faith in dealing with
10 Plaintiff, Plaintiff has been specially damaged by being deprived of disability insurance
11 benefits to which she was and is entitled and by incurring attorney's fees in order to
12 assert her rights under such contract in an amount not yet fully ascertained but in excess
13 of the jurisdictional limits of this Court. In addition, Plaintiff has been caused to seek
14 medical and psychological treatment and has incurred health care bills in an amount to
15 be proven at the time of trial. Plaintiff hereby reserves the right to submit such special
16 damages as they are incurred or ascertained.

17 16. As a direct and proximate result of Defendants' conduct as herein alleged,
18 Plaintiff has suffered emotional distress and has incurred general damages in an amount
19 to be proven at the time of trial.

20 17. Defendants' conduct, as aforesaid, was willful, malicious, oppressive, and
21 done with an intentional and reckless disregard of the rights of Plaintiff, and by way of
22 punishment and example, and to prevent future similar treatment of other policy holders,
23 Plaintiff prays that punitive damages be assessed against Defendants, pursuant to
24 California Civil Code section 3294.

25 WHEREFORE, Plaintiff prays for judgment as follows:

- 26 1. For payment of disability insurance benefits;
27 2. For general damages according to proof;
28 3. For special damages according to proof;

4. For costs of suit, including, but not limited to, reasonable attorney's fees and costs and expert fees;
5. For punitive damages; and,
6. For such other and further relief as the Court deems just and proper.

DATED: June 10, 2005

BOHN & BOHN LLP

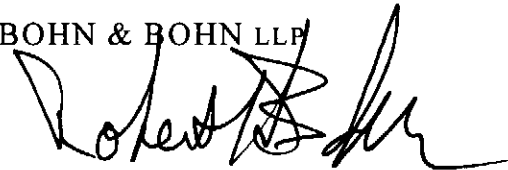


ROBERT H. BOHN
Attorneys for Plaintiff

Plaintiff hereby demands trial by jury.

DATED: June 10, 2005

BOHN & BOHN LLP



ROBERT H. BOHN
Attorneys for Plaintiff